

JAN 12 2013

Board of Vocational Nursing
and Psychiatric Technicians

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8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. PT-2006-1086

13 **GREGORY E. POWELL**
14 **134 11th Street**
Santa Rosa, CA 95401

ACCUSATION

15 **Psychiatric Technician License No. PT**
16 **31164**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely
22 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
23 Psychiatric Technicians, Department of Consumer Affairs.

24 2. On or about January 23, 2002, the Board of Vocational Nursing and Psychiatric
25 Technicians issued Psychiatric Technician License No. PT 31164 to Gregory E. Powell
26 ("Respondent"). The Psychiatric Technician License expired on February 28, 2007, and has not
27 been renewed.
28

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4520 of the Code provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

STATUTORY AND/OR REGULATORY PROVISIONS

6. Section 4521 of the Code states:

"The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

"(a) Unprofessional conduct, which includes but is not limited to any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

...

(i) The use of excessive force upon or the mistreatment or abuse of any patient."

• • •

7. California Code of Regulations, title 16, section 2577 ("Regulation") provides:

As set forth in Section 4521 of the code, gross negligence is deemed unprofessional conduct and is grounds for disciplinary action. As used in Section 4521 "gross negligence" means a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensed psychiatric technician, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the

1 belief that there was a conscious disregard or indifference for the health, safety, or
2 welfare of the consumer shall be considered a substantial departure from the above
3 standard of care.

4 8. Regulation section 2576.6 (a) provides that:

5 "(a) A licensed psychiatric technician shall safeguard patients'/clients' health and
6 safety . . .

7 . . .
8 (b) A licensed psychiatric technician shall adhere to standards of the profession
9 and shall incorporate ethical and behavioral standards of professional practice
10 . . ."

11 . . .
12
13 COST RECOVERY

14 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 FACTUAL BACKGROUND

19 10. On or about September 1, 2004, Respondent was appointed to the position of
20 Senior Psychiatric Technician at the Sonoma Developmental Center in Eldridge, California. Part
21 of Respondent's duties and responsibilities included the provision of care and treatment to
22 developmentally disabled persons who resided at the Sonoma Developmental Center.

23 11. Respondent was on duty on September 12, 2006. At 9:30 a.m., staff psychologist
24 Dr. Lori Pandolfo observed that David P., a developmentally disabled client, was in an agitated
25 state in the Corcoran Unit's family room. Dr. Pandolfo witnessed Respondent come into the
26 family room at which point David P. took off his shoe. Respondent was heard to then repeatedly
27 order David P. to "put your shoe back on."
28

12. Dr. Pandolfo left the family room. However, she stood just outside the door where she continued to watch the interaction between Respondent and David P. Dr. Pandolfo observed that David P., continued to be seated on the couch, with Respondent standing over him. Respondent was then observed to pick up David P's. shoe and strike him twice with the shoe in the area of his left upper arm. Dr. Pandolfo not only witnessed Respondent hitting David P. with the shoe, but was able to hear the sound of the shoe sole making contact with his exposed upper arm.

13. Immediately after being hit, David P. started yelling and screaming. He in fact became so agitated that additional staff were called and responded in an attempt to calm, contain and transfer him from the Corcoran family room.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under Code section 4521, subdivision (a) in that on September 12, 2006, while on duty as a Senior Psychiatric Technician he resorted to physical abuse in response to the agitation of David P., a developmentally disabled client at the Sonoma Developmental Center, as set forth above in paragraphs 10 through 13.

SECOND CAUSE FOR DISCIPLINE

(Client Physical Abuse/Excessive Force)

15. Respondent is subject to disciplinary action under Code 4521, subdivision (i) in that on September 12, 2006, while on duty as a Senior Psychiatric Technician he used excessive force and/or mistreatment and/or physically abused David P., a developmentally disabled client at the Sonoma Developmental Center, as set forth above in paragraphs 10 through 13.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Psychiatric Technician License No. PT 31164, issued to Gregory E. Powell.

1
2 2. Ordering Gregory E. Powell to pay the Board of Vocational Nursing and Psychiatric
3 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
4 Business and Professions Code section 125.3;

5 3. Taking such other and further action as deemed necessary and proper.

6 DATED: January 12, 2010



7 TERESA BELLO-JONES, J.D., M.S.N., R.N.
8 Executive Officer
9 Board of Vocational Nursing and Psychiatric Technicians
10 Department of Consumer Affairs
11 State of California
12 Complainant

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